

**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 176, “Dependent Adult Abuse,” Iowa Administrative Code.

These amendments are made to conform Departmental rules to the following statutory changes enacted by the Iowa General Assembly in 2009:

- Senate File 438, section 1, adds a new category, “sexual exploitation of a dependent adult by a caretaker,” to the definition of “dependent adult abuse” in Iowa Code section 235B.2.

- Senate File 484, section 8, extends the retention period for dependent adult abuse information that is determined to be unfounded from one year to five years and requires the Department to keep records of dependent adult abuse reports that are rejected for evaluation or assessment for three years from the rejection date.

These amendments do not provide for waivers in specified situations since they reflect statutory provisions which the Department has no authority to waive.

The Council on Human Services adopted these amendments August 12, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments merely incorporate statutory changes over which the Department has no discretion.

The Department finds that these amendments confer a benefit on the public by eliminating confusion caused by discrepancies between rules and statute. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 235B.2 as amended by 2009 Iowa Acts, Senate File 438, section 1, and Iowa Code section 235B.9 as amended by 2009 Iowa Acts, Senate File 484, section 8.

These amendments became effective August 13, 2009.

The following amendments are adopted.

ITEM 1. Amend rule **441—176.1(235B)**, definition of “Adult abuse,” as follows:

“Adult abuse” means either:

1. any Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

1. —Physical injury to, or injury which is at variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.

2. —The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.

3. —Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

4. —The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult’s life or health.

- Physical injury to, or injury which is at variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.

- The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.

- Exploitation of a dependent adult, which means the act or process of taking unfair advantage of a dependent adult or the adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.

- The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health.

- Sexual exploitation of a dependent adult by a caretaker. "Sexual exploitation" means any consensual or nonconsensual sexual contact with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in Iowa Code section 702.17. "Sexual exploitation" includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation or investigation. "Sexual exploitation" does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.

2. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.

ITEM 2. Amend subrule 176.13(2) as follows:

**176.13(2)** *Unfounded reports.* A report of dependent adult abuse determined to be unfounded shall be expunged ~~one year~~ five years from the date it is determined to be unfounded, in accordance with Iowa Code section 235B.9, subsection 2, as amended by 2009 Iowa Acts, Senate File 484.

ITEM 3. Adopt the following **new** subrule 176.13(3):

**176.13(3)** *Rejected intakes.* Reports that are found not to meet the criteria to be accepted for evaluation or assessment of abuse shall be kept in the local office for three years from the date the report of abuse was determined to be rejected.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.